

Summary of U.S.-Chile FTA Government Procurement Chapter

Article XX.1: Definitions

Definitions of key terms.

Article XX.2: Scope and Coverage

Outlines the coverage of the agreement, the kinds of activities that are not covered by the Agreement, and commitments to not circumvent the Agreement.

Article XX.3: National Treatment and Non-Discrimination

Requires national treatment of other Party's goods, services and suppliers; precludes discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Also provides that rules of origin determination shall be non-preferential, and offsets are not allowed.

Article XX. 4: Publication of Procurement Measures

Establishes an obligation to publish laws, regulations and other measures that govern government procurement.

Article XX.5: Publication of Advance Notice of Intended Procurement

Requires Parties to publish notices of procurement opportunities in advance, and lists certain information that such notifications must include.

Article XX.6: Technical Cooperation

Requires Parties to provide via the Internet, or other comparable means, access to a database with information on procurement by the covered federal entities.

Entities should be encouraged to publish their future procurement plans.

Article XX.7: Time Periods for the Tendering Process

Requires covered entities to allow at least 30 days between publication of the notice of procurement and the deadline for submitting tenders. Allows for reduction of the time period in certain circumstances, such as for unforeseen emergencies .

Article XX.8: Information on Intended Procurements

Requires Parties to provide all information that suppliers need to prepare and submit responsive

tenders. Such information includes all the criteria that will be used to evaluate tenders. If entities modify the criteria, they must provide the new information to all suppliers and in a timely manner.

Article XX.9: Technical Specifications

Procuring entities shall not adopt or apply any technical specification that would create unnecessary obstacles to trade. Technical specifications shall, where appropriate, be performance-based, and based on international standards, where applicable. Technical specifications shall not be written to favor a particular supplier or product.

Article XX.10: Conditions for Suppliers= Participation in Procurement

Establishes requirements that apply when entities require suppliers to satisfy registration, qualification or other conditions for participation in procurement. These include timely publication of information on such procedures, and allowing adequate time for suppliers to prepare and submit responsive applications. Any conditions of participation shall be limited to those that are essential to ensure that the potential supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the procurement. Prohibits restriction of procurement only to suppliers who have previously participated in procurements in the territory of the Party. Require consideration of supplier's global activities. Requires prompt notification of suppliers of qualification decisions.

Article XX.11: Tendering Procedures

Requires open tendering procedures, in which all interested suppliers may participate, except under certain defined circumstances, such as absence of tenders. When open tendering procedures are not used, entities must make public the reason.

Article XX.12: Awarding of Contracts

Tenders must be in writing, and must conform to the requirements in the tender documentation. Award of contracts must be based solely on the criteria set out in the tender documentation.

Article XX.13: Information on Awarded Contracts

Requires procuring entities to notify suppliers of the winning offer, and to publish certain information about the winning bid, such as the name of the supplier, the winning bid, and the goods or services involved. Requires maintenance of procurement records for at least three years.

Article XX.14: Non-Disclosure of Information

Requires Parties to protect confidential or proprietary information, and treat tenders in confidence.

Article XX.15: Ensuring Integrity in Procurement Practices

Requires Parties to maintain laws that make bribery of procurement officials a crime

Article XX.16: Procurement Exceptions

Nothing in the chapter shall be construed to prevent any Party from adopting or maintaining measures necessary to protect public morals, order or safety; necessary to protect human, animal or plant life or health; necessary to protect intellectual property; or relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

Article XX.17: Domestic Review of Supplier Challenges

Requires Parties to provide for domestic review of challenges by suppliers to the procurement process. Parties must establish an impartial review authority, which is independent from the procuring entities, to hear the challenges, as well as procedures that provide for timely, transparent and effective reviews based on due process. Review procedures shall be made available in writing.

Article XX.18: Modifications and Rectifications to Coverage

Outlines the procedures under which Parties may make modifications and rectifications to the coverage under the chapter.

Article XX.19: Government Procurement Working Group

Creates a bilateral working group to address issues related to implementation of the chapter.

Article XX.20: Further Negotiations

If a Party offers a third party more advantageous coverage, then that Party shall enter into negotiations with the other Party (if requested) with a view towards extending coverage on a reciprocal basis.